Office Supreme Court
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962.

No. 893.

KENNETH ALONZO TATUM,
Petitioner,

vs.

STATE OF TEXAS,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF THE STATE OF TEXAS.

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INDEX

Opinions Below	1
Jurisdiction	2
Question Presented	3
Statutes Involved	3
Statement of the Case	3
Reasons for Granting This Writ	12
Conclusion	19
Certificate	20
Appendix "A", Opinion of the Court of Criminal Appeals of Texas	A1
Appendix "B", Order Overruling Petitioner's Motion for Rehearing	A3

Table of Cases

Accarino v. *United States*, 85 U.S. App. D.C. 403, 179 F.2d 465	17
Miller v. *State*, 78 S. Ct. 1190	11, 14
People v. *Maddox*, 46 Cal. 2d 301, 294 P.2d 6	16
People v. *Martin*, 45 Cal. 2d 755, 290 P.2d 855	16
Read v. *Case*, 4 Conn. 166	16
Schwartz v. *State of Texas*, 73 S. Ct. 232	12
Se. Wayne's Case, 5 Coke Co. Rep. 91 a, 11 E. R. C. 629, 77 Eng. Repr. 194, 195	15
Wooley v. *State*, 285 S.W.2d 218	11

Texts and Statutes

American Law Institute's proposed Code of Criminal Procedure, Sec. 28	16
Art. 727a, C. C. P. of Texas	2, 3, 7, 13, 14
Foster, Crown Law (1762), 320-321 (2d ed. 1776)	15
1 Hale, Pleas of the Crown, 583 (1736)	15
2 Hawkins, Pleas of the Crown, c. 14, Sec. 7 (1762)	15
23 Tex. Jur. 2d, Sec. 144, Evidence, Page 216	18, 19
24 Tex. Jur. 2d, Sec. 707, Evidence, Page 360	19
18 U.S.C.A., Sec. 3109	2, 3, 7, 12, 14, 16, 18
28 U.S.C.A., Section 1257 (3)	2
Wilgus, Arrest Without a Warrant, 22 Mich. L. Rec. 541	16

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Kenneth Alonzo Tatum, petitioner herein, prays that a writ of certiorari issue to review the judgment of the Court of Criminal Appeals of the State of Texas entered on the 21st day of November, 1962, wherein said Court affirmed the judgment of the Criminal District Court No. 2 of Harris County, Texas.

OPINIONS BELOW.

The opinions below appear:

Opinion of the Court of Criminal Appeals of Texas, entitled Kenneth Alonzo Tatum, Appellant, v. The State

of Texas, Appellee, reported in 363 S.W.2d 932. It is printed in the appendix hereto, page A1.

JURISDICTION.

The judgment of the Court of Criminal Appeals of Texas was entered on the 21st day of November, 1962, and is appended here as Appendix "A".

Petitioner's Motion for Rehearing was overruled on the 30th day of January, 1963, and is appended hereto as Appendix "B".

The jurisdiction of this Court is invoked under Title 28, U.S.C.A., Section 1257 (3).

The Court of Criminal Appeals of Texas is not an intermediate court. It is the court of last resort in Texas in all matters within its jurisdiction. Its judgments are not reviewed by the Texas Supreme Court, or by any other Texas Court.

Petitioner objected to the admission in evidence of certain marijuana, which was obtained by police officers from a search made of the appellant and his home. Among the objections being urged were: Such evidence was illegally obtained in violation of Title 18, Sec. 3109, U.S.C.A., which is as follows: The officer may break open any outer or inner door or window of a house or any part of a house, or anything therein, to execute a search warrant, if after notice of his authority and purpose, he is refused admittance or when necessary to liberate himself or a person aiding him in the execution of the warrant.

That such evidence was illegally obtained and in violation of Art. 727a, C. C. P. of Texas, which provides that "No evidence obtained by an officer or other person in vio-

lation of any provision of the Constitution or laws of the United States or of this State shall be admitted in evidence against the accused on the trial of any criminal case."

QUESTION PRESENTED.

Was the evidence used to convict the Defendant obtained and used in violation of Title 18, Section 3109, U.S.C.A.?

STATUTES INVOLVED.

Title 18, Sec. 3109, United States Code Annotated (U.S.C.A.), p. 47.

The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute a search warrant, if, after notice of his authority and purpose, he is refused admittance or when necessary to liberate himself or a person aiding him in the execution of the warrant.

Art. 727a, Vernon's Texas Code, Crim. Proc., Vol. 2, p. 236, Cumulative Annual Pocket Part, 1962 of Texas which provides that "No evidence obtained by an officer or other person in violation of any provision of the Constitution or laws of the United States or of this State shall be admitted in evidence against the accused on the trial of any criminal case."

STATEMENT OF THE CASE.

The Petitioner was charged by indictment with the offense of possession of a narcotic drug to-wit: Marijuana. He was found guilty and his punishment was assessed at

confinement in the State Penitentiary for a period of ten years. At the time of the trial the Defendant objected to the introduction of evidence resulting from the search on the above grounds which the Court overruled and the Defendant duly excepted thereto (S. of F. pp. 8-14, 26, 28, 31, 37, 43, 44, 56, 58, and 66).

The Court, the State, and the Defendant agreed (S. of F. pp. 14-15-6-7 and 28) that all of the objections stated above would be considered as having been made by the Defendant by his stating that we object on the same grounds as previously stated.

The police officers on the 14th day of September, 1961, obtained a search warrant from W. C. Ragan, Justice of the Peace, Precinct No. 1, Harris County, Texas, to search the premises of the Defendant, Kenneth Alonzo Tatum, at 7326 Touchstone Street, Houston, Texas, for narcotics, narcotic paraphernelia, marijuana and barbiturates and on that day they went to the premises and commenced a search under the search warrant (S. of F. pp. 3-8) and the search warrant and return thereon.

The defendant's objections were raised in the trial court (S. of F. pp. 12-14) (This question was pursued and urged on appeal in the Court of Criminal Appeals of Texas, Brief for Appellant, pp. 4, 5-16 and was re-asserted in the Court of Criminal Appeals of Texas in the Appellant's Motion for Rehearing pp. 5-15). These objections relate to the offering of evidence obtained as a result from the search in that the officers failed to comply with the statutes and laws referred to and the requirements of such statutes and laws and the manner in which entrance was made and the search was conducted, and failure to give the proper notice as required.

Officer Pollock testified (S. of F. p. 32) that six officers went to the defendant's house after dark around 8:00 p.m., that there were six officers two of whom went to the back door and four to the front door. Officer Pollock was one of the officers that went to the front door; that he didn't knock and didn't hear or see anybody knock. That he did not make his purpose for being out there known to Kenneth Tatum and that Kenneth Tatum didn't say anything to the officers until they had already got on the inside (S. of F. p. 33).

Officer Pollock didn't see or hear anyone tell Kenneth Tatum, that they were out there with a search warrant. That he heard no one tell Kenneth Tatum that they were out there for the purpose of searching his premises or to arrest him (S. of F. p. 33).

That when he entered the premises of Kenneth Tatum, he did so with an armed pistol in his hand (S. of F. pp. 33-34-16-17); that he at least at one time testified that he thought all six officers had open pistols in their hands.

That at the entrance of the house there was a screen door that opened outward and a wooden door that opened inward (S. of F. p. 34). That the screen door was closed. Officer Strickland opened the screen door and that the wooden door was closed (S. of F. p. 34), and that the officers opened the door which was closed but unlocked (S. of F. p. 35), and went into the house.

Officer Strickland testified that this was a private residence (S. of F. p. 40) and that Kenneth Tatum was sitting on the couch (S. of F. p. 47) in the living room. That pocket dustings were taken from the Defendant's pockets at the Police Station (S. of F. p. 45). Officer Strickland testified (S. of F. p. 46) that there was a screen door and

regular door on the front of the house, and that both were closed at the time he arrived on the scene and that he did have a gun on his person. That some of the officers had cocked pistols (S. of F. p. 47). That while the officers were on the front porch they did not tell the Defendant that they were police officers (S. of F. p. 48), and that all of the officers were in plain clothes. That while the officers were still on the porch they did not tell Kenneth Tatum that they were out there with a search warrant.

That Kenneth Tatum was not told by the officers that they were out there for the purpose of searching his premises (S. of F. p. 48), before they went in. That it was only after they entered the house that they produced the search warrant (S. of F. pp. 49-51).

That Kenneth Tatum did not get up from the couch and start to run and that he never made any motion to leave (S. of F. p. 52). Officer Strickland testified that he didn't have time to get up.

Officer Stringfellow testified that he and another officer came in through the back door (S. of F. p. 59). That he didn't knock and that the screen door was closed but that they opened it and went inside. That neither he nor the other officer said anything before they went in.

Officer Baker testified that Kenneth Tatum did not say anything to the officers while they were still on the front porch (S. of F. pp. 68-69-73), and that he didn't hear the defendant say "come in" and that the officers didn't tell the Defendant what their purpose in being there was before they had gained entrance to his house. That while the officers were on the outside of the Defendant' home they didn't tell him they were police officers and didn't make known to him their purpose in being there (S. of F. p. 70) and that it was only after they had gained en-

trance to the Defendant's home that they made it known to the defendant that they had a search warrant. Officer Baker testified that this was the defendant's home (S. of F. p. 71).

The Defendant contended and still contends that the evidence was obtained and used in violation of Title 18, Section 3109, U.S.C.A., and in violation of Art. 727a, C. C. P. of Texas.

When the State rested its case the Defendant made the motion appearing in the S. of F. p. 66, which motion is as follows:

At this time we would like for the Court to instruct the jury to find the Defendant not guilty, on the grounds that the evidence was obtained in violation of Title 18, Section 3109, U.S.C.A., which reads as follows: "The officer may break open any outer or inner door or window of a house or any part of a house, or anything therein, to execute a search warrant, if after notice of his authority and purpose, he is refused admittance or when necessary to liberate himself or a person aiding him in the execution of the warrant".

The evidence in this case shows that these officers went out there with the purpose of executing a search warrant, and that they failed to make their purpose known to the defendant, that they were out there with a warrant and for the purpose of searching his premises, and for the purpose of arresting him.

The Court: That is overruled.

Mr. Miller: Note our exception.

Appellant timely presented the following requested instruction: "If you believe from the evidence or have a reasonable doubt that the officers or any of them although

armed with a search warrant entered the premises with a drawn pistol without giving notice that they were police officers armed with a search warrant and were there for the purpose of searching his premises and arresting him you will acquit the Defendant". Said requested instruction was refused and appellant timely and properly excepted to its refusal (Tr. pp. 12-13).

(This question was pursued and urged on appeal in the Court of Criminal Appeals of Texas, Brief for Appellant, pp. 17-18 and was re-asserted in the Court of Criminal Appeals of Texas in the Appellant's Motion for Rehearing pp. 15-16.)

In the event that the Defendant was not entitled to the motion requesting the Court to instruct the jury to find him not guilty as set out above then the evidence certainly raised a fact issue which the Court should have submitted to the jury which he refused to do and such refusal constitutes reversible error.

The Appellant timely presented the following objections to the Court's main charge to the jury and requested a proper charge thereon be given to the jury which objections were as follows:

"Defendant objects and excepts to the charge of the Court because nowhere in said charge does the Court charge the law applicable to Title 18, Section 3109, U.S.C.A.

Defendant objects and excepts to the charge of the Court because nowhere in said charge does the Court charge the law applicable to Art. 321 of the C. C. P. of the State of Texas." Said requested objections were refused and appellant timely and properly excepted to their refusal (Tr. p. 14).

(This question was pursued and urged on appeal in the Court of Criminal Appeals of Texas, Brief for Appellant, pp. 18-19 and was re-asserted in the Court of Criminal Appeals of Texas in the Appellant's Motion for Rehearing, pp. 16-17.)

In the event that the Defendant was not entitled to the motion requesting the Court to instruct the jury to find him not guilty as set out above then the evidence certainly raised a fact issue which the Court should have submitted to the jury, which he refused to do and such refusal constitutes reversible error.

Appellant timely presented the following requested instruction: "Defendant objects and excepts to the charge of the Court because nowhere in said charge does the court charge the Jury that if they believe from the evidence, or if they have a reasonable doubt thereof that the Defendant did not give his consent to the entry of his home at the time it was entered by the officers that the jury should find the Defendant *not guilty*, and so say by their verdict". Said requested instruction was refused and appellant timely and properly excepted to its refusal (Tr. p. 15).

(This question was pursued and urged on appeal in the Court of Criminal Appeals of Texas, Brief for Appellant, pp. 20-21 and was re-asserted in the Court of Criminal Appeals of Texas in the Appellant's Motion for Rehearing, pp. 17-18.)

In the event that the Defendant was not entitled to the motion requesting the Court to instruct the jury to find him not guilty as set out above then the evidence certainly raised a fact issue which the Court should have submitted to the jury which he refused to do and such refusal constitutes reversible error.

Appellant timely presented the following requested instruction: "If you believe from the evidence or have a reasonable doubt that the officers or any of them although armed with a search warrant entered the premises of Kenneth Tatum with a drawn pistol without giving notice of their authority and purpose you will acquit the defendant and by your verdict say 'not guilty' ". Said requested instruction was refused and appellant timely and properly excepted to its refusal (Tr. p. 16). (This question was pursued and urged on appeal in the Court of Criminal Appeals of Texas; Brief for Appellant, pp. 21-22 and was re-asserted in the Court of Criminal Appeals of Texas in the Appellant's Motion for Rehearing, pp. 18-19.)

In the event that the Defendant was not entitled to the motion requesting the Court to instruct the jury to find him not guilty as set out above then the evidence certainly raised a fact issue, which the Court should have submitted to the jury which he refused to do and such refusal constitutes reversible error. The Appellant timely presented the following objections to the Court's main charge to the jury and requested a proper charge thereon be given to the jury which objections were as follows:

We object to it on the grounds that the charge fails to instruct the jury that if they believe from the evidence, or have a reasonable doubt thereof, that the officers, or any of them, although armed with a search warrant, entered the premises of Kenneth Tatum with a drawn pistol, without giving notice of their authority and purpose, then they should acquit the Defendant and say by their verdict "Not guilty." (Tr. p. 18). (This question was pursued and urged on appeal in the Court of Criminal Appeals of Texas, Brief for Appellant, pp. 22-23 and was re-asserted in the Court of Criminal Appeals of Texas, in the Appellant's Motion for Rehearing pp. 19-20.)

In the event that the Defendant was not entitled to the motion requesting the Court to instruct the jury to find him not guilty as set out above then the evidence certainly raised a fact issue, which the Court should have submitted to the jury which he refused to do and such refusal constitutes reversible error.

Several officers testified that Kenneth Tatum said nothing at all prior to their gaining forced entrance into his home. No officer testified that they made their purpose known to the Defendant prior to the entrance into his home. All officers were in plain clothes; and at least one officer entered with a cocked pistol. Kenneth Tatum was not told by the officers that they were there with a search warrant for the purpose of searching his premises and arresting him until they had gained entrance into his home.

The evidence if not conclusive in favor of the defendant that the officers failed to comply with the above statutes certainly raised a question of fact that the Court should have submitted to the jury. Some proper charge to the jury was required by the holding of the Supreme Court of the United States in the case of *Miller* v. *State*, 78 S. Ct. 1190.

The Defendant not only submitted what he believed to be proper charges, but out of precaution also objected to the court's failure to charge the jury. In the case of *Wooley* v. *State*, 285 S.W.2d 219, the Court said, (3) "Appellant's requested charge was sufficient to call the Court's attention to the error in the main charge, and under the 1955 amendment to Article 659, Vernon's Ann. C. C. P., no further exception or objection to the charge was necessary to preserve the error."

REASONS FOR GRANTING THIS WRIT.

The Legislature of Texas has very carefully provided that evidence obtained in violation of the laws of the United States shall not be admissible against the accused in a criminal case. The Criminal District Court No. 2 of Harris County, Texas, refused to permit the Defendant to assert Title 18, Section 3109, U. S. C. A., as a defense to the introduction of evidence, and further held that the Defendant was not entitled to any charges to the jury relating to the manner in which entrance was made and the search was conducted and whether notice was given as required by law.

The Court of Criminal Appeals of Texas, although requested to determine whether or not the Defendant could assert Title 18, Section 3109, U.S.C.A., as a defense refused to do.

The question thus raised is substantial, important and of great public interest. It is important to all people of this nation to know whether or not a Federal Statute is applicable to proceedings in State Courts.

The evidence in this case shows that these officers went out there with the purpose of executing a search warrant, and that they failed to make their purpose known to the defendant; that they were out there with a warrant for the purpose of searching his premises, and for the purpose of arresting him, and gained entrance by using force, while armed with pistols.

A question arises as to whether or not this federal statute is applicable to State proceedings. In the case of *Schwartz v. State of Texas*, 73 S. Ct. 232, the Supreme Court of the United States said: "We are dealing here

only with the application of a federal statute to state proceedings. Without deciding, but assuming for the purposes of this case, that the telephone communications were intercepted without being authorized by the sender within the meaning of the Act, the question we have is whether these communications are barred by the federal statute, Sec. 605, from use as evidence in a criminal proceeding in a state court * * *."

Texas itself has given consideration to the admissibility of evidence obtained in violation of constitutional or statutory law and has carefully legislated concerning it. In 1925 Texas enacted a statute providing that evidence obtained in violation of the Constitution or laws of Texas or of the United States should not be admissible against the accused in a criminal case. In 1929 this Article 727a of the Texas Code of Criminal Procedure was amended to provide that evidence obtained in violation of the Constitution or laws of Texas, or the Constitution of the United States should be inadmissible in evidence, thus eliminating from the coverage of the statute evidence obtained in violation of the laws of the United States.

Where a state has carefully legislated so as not to render inadmissible evidence obtained and sought to be divulged in violation of the laws of the United States, this Court will not extend by implication the statute of the United States so as to invalidate the specific language of the state statute. If Congress is authorized to act in a field, it should manifest its intention clearly. It will not be presumed that a federal statute was intended to supercede the exercise of the power of the state unless there is a clear manifestation of intention to do so. The exercise of Federal Supremacy is not lightly to be presumed.

The Schwartz case was decided on December 5, 1952. The Texas Legislature amended Art. 727a, C. C. P., to be ef-

fective June 4, 1953, to read as follows: *"No evidence obtained by an officer or other person in violation of any provision of the Constitution or laws of the United States or of this State shall be admitted in evidence against the accused on the trial of any criminal case. As amended Acts 1953, 53rd leg., p. 669, ch. 253, Sec. 1.*

Thus the Texas Legislature has very carefully legislated to include the laws of the United States and when such objection is urged by the Defendant as did Kenneth Tatum in this case it should be available to him as a defense.

In the case of *Miller* v. *United States*, 78 S. Ct. 1190, the Supreme Court of the United States said, "But the Government agrees with petitioner that the validity of the entry to execute the arrest without warrant must be tested by criteria identical with those embodied in 18 U.S.C., Sec. 3109, 18 U.S.C.A., Sec. 3109, which deals with entry to execute a search warrant. That section provides that an officer, executing a search warrant, may break open a door only if, "after notice of his authority and purpose", he is denied admittance * * *.

"From earliest days, the common law drastically limited the authority of law officers to break the door of a house to effect an arrest. Such action invades the precious interest of privacy summed up in the ancient adage that a man's house is his castle. As early as the 13th yearbook of Edward IV (1461-1483), at folio 9, there is a recorded holding that it was unlawful for the sheriff to break the doors of a man's house to arrest him in a civil suit in debt or trespass, for the arrest was then only for the private interest of a party. Remarks attributed to William Pitt, Earl of Chatham, on the occasion of debate in Parliament on the searches incident to the enforcement of an excise on cider, eloquently expressed the principle:

"The poorest man may in his cottage bid defiance to all the forces of the Crown. It may be frail; its roof may shake; the wind may blow through it; the storm may enter; the rain may enter; but the King of England cannot enter—all his force dares not cross the threshold of the ruined tenement!"

But the common law recognized some authority in law officers to break the door of a dwelling to arrest for felony. The common-law authorities differ, however, as to the circumstances in which this was the case. Hawkins says: "where one lies under a probable Suspicion only, and is not indicted, it seems the better opinion at this Day, That no one can justify the Breaking open Doors in Order to apprehend him." 2 Hawkins, Pleas of the Crown, c. 14, Sec. 7 (1762); see also Foster, Crown Law (1762), 320-321 (2d ed. 1776). Coke appears to have been of the same view, and to have thought that the breaking of a house was limited to cases in which a writ, now our warrant, had issued. Co. 4th Inst. 177. On the other hand, Hale says that "A man, that arrests upon suspicion of felony, may break open doors, if the party refuse upon demand to open them * * *." 1 Hale, Pleas of the Crown, 583 (1736).

Whatever the circumstances under which breaking a door to arrest for felony might be lawful, however, the breaking was unlawful where the officer failed to state his authority and purpose for demanding admission. The requirement was pronounced in 1603 in Semayne's Case, 5 Coke Co. Rep. 91 a, 11 E. R. C. 628, 77 Eng. Repr. 194, at 195: "In all cases where the King is party, the sheriff (if the doors be not open) may break the party's house, either to arrest him, or to do other execution of the K(ing)'s process, if otherwise he cannot enter. But before he breaks it, he ought to signify the cause of his coming, and to make request to open doors * * *."

The requirement stated in Semayne's Case still obtains. It is reflected in 18 U.S.C., Sec. 3109, 18 U.S.C.A., Sec. 3109, in the statutes of a large number of States, and in the American Law Institute's proposed Code of Criminal Procedure, Sec. 28. *It applies, as the Government here concedes, whether the arrest is to be made by virtue of a warrant, or when officers are authorized to make an arrest for a felony without a warrant.*

There are some state decisions holding that justification for noncompliance exists in exigent circumstances, as, for example, when the officers may in good faith believe that they or someone within are in peril of bodily harm, *Read* v. *Case*, 4 Conn. 166, or that the person to be arrested is fleeing or attempting to destroy evidence. *People* v. *Maddox*, 46 Cal. 2d 301, 294 P.2d 6.

But whether the unqualified requirements of the rule admit of an exception justifying noncompliance in exigent circumstances, is not a question we are called upon to decide in this case. The Government makes no claim here of the existence of circumstances excusing compliance. The Government concedes that compliance was required but argues that "compliance is evident from the events immediately preceding the officers' forced entry."

That rule seems to require notice in the form of an express announcement by the officers of their purpose for demanding admission. The burden of making an express announcement is certainly slight. A few more words by the officers would have satisfied the requirement in this case. It may be that, without an express announcement of purpose, the facts known to officers would justify them in being virtually certain that the petitioner already knows their purpose so that an announcement would be a useless gesture. *Cf. People* v. *Martin*, 45 Cal. 2d 755, 290 P.2d 855; Wilgus, Arrest Without a Warrant, 22 Mich. L. Rev. 541,

798, 802 (1924). But even by that test the evidence upon which the Government relies was not sufficient to justify the officers' failure expressly to notify the petitioner that they demanded admission to his apartment for the purpose of arresting him.

The single fact known to the officers upon which the Government relies is the "split-second" occurrence in which the petitioner evinced "instantaneous resistance to their entry," an "almost instinctive attempt to bar their entry after they (the officers) had identified themselves as police * * *." It is argued that this occurrence "certainly points up that he knew their purpose immediately * * * (and) at once realized that he had been detected and that the officers were there to arrest him": that "(i)t would be wholly unrealistic to say that the officers had not made their purpose known because they did not more formally announce that they were there to arrest him."

But, first, the fact that petitioner attempted to close the door did not of itself prove that he knew their purpose to arrest him. It was an ambiguous act. It could have been merely the expected reaction of any citizen having this experience at that hour of the morning, particularly since it does not appear that the officers were in uniform, *cf. Accarino v. United States*, *supra*, 85 U.S. App. D.C. at page 403, 179 F.2d at page 465, and the answer "'Police" was spoken "in a low voice" and might not have been heard by the petitioner so far as the officers could tell. * * *

We are duly mindful of the reliance that society must place for achieving law and order upon the enforcing agencies of the criminal law. But insistence on observance by law officers of traditional fair procedural requirements is, from the long point of view, best calculated to contribute to that end. However much in a particular case insistence upon such rules may appear as a technicality that inures

to the benefit of a guilty person, the history of the criminal law proves that tolerance of shortcut methods in law enforcement impairs its enduring effectiveness. The requirement of prior notice of authority and purpose before forcing entry into a home is deeply rooted in our heritage, and should not be given grudging application. Congress, codifying a tradition embedded in Anglo-American law, has declared in Sec. 3109 the reverence of the law for the individual's right of privacy in his house. Every householder the good and the bad, the guilty and the innocent, is entitled to the protection designed to secure the common interest against unlawful invasion of the house. The petitioner could not be lawfully arrested in his home by officers breaking in without first giving him notice of their authority and purpose. Because the petitioner did not receive that notice before the officers broke the door to invade his home, the arrest was unlawful, and the evidence seized should have been suppressed.

Officer Strickland was the only officer in the entire case, who said that Kenneth Tatum, said, "come in". The effect of the holding of the Court of Criminal Appeals is that Strickland's testimony was established as a matter of law. Officer Strickland as well as all other officers except Baker were interested witnesses for the State. The State is bound by the testimony of its own witnesses and certainly Strickland's testimony was not established as a matter of law. We disagree with the Court wherein it said, "the fact that certain witnesses may not have heard certain things done and said does not constitute evidence that the same did not transpire just as Strickland had testified." That Court is in error in such holding for the law is well established that where certain witnesses testify that they did not hear a certain remark their testimony is evidence that such remark or statement was not made. 23 Tex. Jur. 2d, Sec. 144, Evidence, Page 216. Certainly where witnesses

within a few feet of a witness who testified that he heard the defendant say, "come in" say that they did not hear the defendant say "come in" a question of fact is raised as to whether or not such statement was said as the testimony of such witness does not establish that fact as a matter of law, and the fact that other witnesses testify that they did not hear such statement is sufficient to prove that such remark was not made. 23 Tex. Jur. 2d. Sec. 144, Evidence, Page 216; 24 Tex. Jur. 2d. Sec. 707, Evidence, Page 360. The Courts' of Texas refusal to deal with this question is an evasion of the defendant's rights.

In view of the foregoing, it is the appellant's contention that he has been deprived of a right, privilege, or immunity claimed by him under the statutes of the United States and the Federal Question was necessary for a determination of this case; that no adequate non-federal ground adequately supports the State's judgment.

CONCLUSION.

For the foregoing reasons, this petition for a writ of certiorari to the Court of Criminal Appeals of the State of Texas should be granted.

Respectfully submitted,

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CERTIFICATE.

I, Buck C. Miller, Attorney for Petitioner herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 1st day of March, 1963, I served a copy of foregoing Petition for Writ of Certiorari on Waggoner Carr, Attorney General of Texas, Capitol Station, Austin 11, Texas, by mailing a copy in a duly addressed envelope, with first class postage prepaid, certified mail return receipt requested at the above address.

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